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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,220	12/15/2003	Matthew Barrer	AED-0003	8637

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EXAMINER	
BOYCE, ANDRE D	

ART UNIT	PAPER NUMBER
3623	

MAIL DATE	DELIVERY MODE
09/27/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/734,220	BARRER, MATTHEW	
	Examiner	Art Unit	
	Andre Boyce	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26,27,30,31,33,34 and 36-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26,27,30,31,33,34 and 36-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/19/10 has been entered.

2. This Final office action is in response to Applicant's submission. Claims 26, 27, 30, 31, 33, 34 and 36-47 are pending.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 26, 27, 30, 31, 33, 34 and 36-47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based upon consideration of all of the relevant factors with respect to the claim as a whole, claim(s) 26, 27, 30, 31, 33, 34 and 36-47 are held to claim an abstract idea, and is/are therefore rejected as ineligible subject matter under 35 U.S.C. 101 *Bilski v. Kappos*, 95 USPQ2d 1001 (U.S. 2010). The rationale for this finding is explained below:

In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to a particular machine or apparatus, or (2) transform a particular article to a different state or thing.

With respect to independent claim 26, the claim language recites the steps of auditing the facility and the program, reporting results and certifying, however the claim language does not include the required tie or transformation. Here, there is insufficient recitation of a machine or transformation, wherein involvement of machine, or transformation, with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, e.g., data gathering, or merely recites a field in which the method is intended to be applied.

Claims 27, 30-31, 33-34 and 36-47 are rejected based upon the same rationale, wherein the claim language does not include the required tie or transformation.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 26, 27, 30, 31, 33, 34 and 36-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altmann (10 Frequently Asked Questions about Automated External Defibrillators, September 1999), in view of Becker et al (Public Locations of Cardiac Arrest: Implications for Public Access Defibrillation, 1998), in further view of “Providing Automated External Defibrillation,” 1995 [hereinafter, PAED].

As per claim 26, Altmann discloses a method of supporting the maintenance of an existing cardiac emergency readiness program at a facility wherein the program includes at least one automated external defibrillator deployed in at least one location at the facility and having a replaceable battery and electrodes for resuscitating a cardiac arrest victim, the method (i.e., automated external defibrillator (AED) program in a company, page 3, including a FirstSave AED with preconnected, nonpolarized electrodes, number 4, page 2) comprising:

auditing the facility and the program to determine if certain minimum program requirements for automated external defibrillators and their use within the facility have been met by (i.e., Universal Access to Defibrillation statues requiring completion or equivalent training program, including additional refresher classes required to renew certification, i.e., audit, wherein the AED program include how may devices a company needs, which inherently includes determining proper placement and how many people are being trained, page 3);

causing an accessibility survey of the facility to be performed to determine the accessibility of the at least one deployed defibrillator (i.e., determination of company's needs, including how many devices, number 9, page 3), causing a review of personnel at the facility to determine the number and status of trained and certified personnel to use the at least one deployed defibrillator (i.e., amount of people trained in using the AED including certification, number 9, page 3), and determining as one of the minimum program requirements a number and status of trained and certified personnel required in order to assure proper coverage and

usage of the required number of defibrillators including the at least one deployed defibrillator at the facility (i.e., amount of people trained in using the AED including certification, number 9, page 3),

reporting results of the auditing to the facility so as to cause any necessary modifications in the program to be made including the number and location of, the battery and electrodes for, and the personnel who are trained and certified to use defibrillators including the at least one deployed defibrillator in order to satisfy the minimum program requirements (i.e., Survivalink works with customers to develop and implement AED program, including providing curriculum, number 9, page 3), and

certifying that the minimum program requirements for defibrillators including the at least one deployed defibrillator and their usage at the facility have been satisfied (i.e., Universal Access to Defibrillation statues requiring completion or equivalent training program, wherein the AED program include how may devices a company needs, which inherently includes determining proper placement, page 3).

Altmann does not explicitly disclose determining as one of the minimum program requirements the required locations for defibrillators as compared with the at least one location of the at least one deployed defibrillator so as to assure accessibility by providing predetermined proximity of the defibrillators to a victim regardless of the location of the victim within the facility. Becker et al disclose a plan for placement of defibrillators in higher-incidence locations (paragraph 2, page 5).

Neither Altmann nor Becker et al disclose causing an operational review of the at least one deployed defibrillator, determining as one of the minimum program requirements any maintenance requirements of the at least one deployed defibrillator. PAED disclose medical control and quality assurance, including periodic assessment of the service and operators and identification of AED device used, page 3. In addition, Altmann discloses an AED including preconnected, nonpolarized electrodes (number 4, page 2), however neither Altmann, Becker et al, nor PAED explicitly disclose including the battery and electrodes of the at least one deployed defibrillator and including a required time for replacement of the battery and the electrodes. The Examiner takes Official Notice that reviewing the battery and electrodes, including determining a time for replacement is old and well known.

It would have been obvious to one of ordinary skill in the art to include determining as one of the minimum program requirements the required locations for defibrillators as compared with the at least one location of the at least one deployed defibrillator so as to assure accessibility by providing predetermined proximity of the defibrillators to a victim regardless of the location of the victim within the facility, causing an operational review of the at least one deployed defibrillator including the battery and electrodes of the at least one deployed defibrillator, and determining as one of the minimum program requirements any maintenance requirements of the at least one deployed defibrillator including a required time for replacement of the battery and the electrodes in Altmann, as seen in Becker et al and PAED, respectively, since the claimed invention is merely a combination of old elements,

and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 27, Altmann discloses promoting the facility as having a certified cardiac emergency readiness program (i.e., communicate AED program information, number 10, page 3).

As per claim 30, Altmann discloses providing a defibrillator usage review after a sudden cardiac arrest event at the facility (i.e., automatic re-analysis of condition after usage, number 4, page 2).

As per claim 31, Altmann does not explicitly disclose ensuring compliance with legal requirements associated with the certified cardiac emergency readiness program (i.e., liability concerning AED use, top of page 3).

As per claim 33, Altmann discloses coordinating insurance coverage relating to the certified cardiac emergency readiness program (i.e., determination of proper liability coverage, top of page 3).

As per claim 34, Altmann discloses the number of automated external defibrillators (i.e., how may devices a company needs, page 3). Altmann does not explicitly disclose the maintenance of a checklist including the name of the person responsible for the cardiac emergency program. PAED discloses the EMS agency must identify the Medical Director responsible for the AED program (page 3). It would have been obvious to one of ordinary skill in the art to include the name of the person responsible for the cardiac emergency program as seen in PAED, in

Altmann, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claims 36-42, 46 and 47, Altmann does not explicitly disclose wherein the facility is a hotel, a convention hall, a shopping mall, a golf course, used for supporting event, used for concerts, a health club, an amusement park, and an educational institution. However, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry,* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

In addition, Becker et al disclose all these establishments as seen in tables 1 and 2. As a result, it would have been obvious to include the facility is a hotel, a convention hall, a shopping mall, a golf course, used for supporting event, used for concerts, a health club, an amusement park, and an educational institution in Altmann, as seen in Becker et al, since the claimed invention is merely a combination of old elements, and in the combination each element merely would

have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claims 43-45, Altmann discloses wherein the facility is a business complex, an industrial site, and a manufacturing site (i.e., company with employees).

Response to Arguments

7. In the Remarks, with respect to the 35 USC 101, Applicant argues each step of claim 26 recites and is tied to a defibrillator (i.e., a machine), and that the claim meets the transformation prong of the *In re Bilski* test. The Examiner respectfully disagrees. The method steps of claim 26, e.g., auditing, reporting, certifying, etc., are performed without a machine (i.e., computer, processor, etc.). The fact that the steps concern supporting maintenance of an existing cardiac emergency readiness program at a facility wherein the program includes at least one automated external defibrillator (AED) has nothing to do with the 35 USC 101 requirement. Specifically, factors weighing against eligibility include insufficient recitation of a machine or transformation, wherein involvement of machine, or transformation, with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, e.g., data gathering, or merely recites a field in which the method is intended to be applied. Here, the AED is merely tangentially related to the performance of the steps.

In addition, with respect to the transformation requirement, modifications to the facility's cardiac emergency readiness program is not analogous to the X-ray

attenuation data discussed in *In Re Abele*, 684 F.2d 902 (C.C.P.A. 1982), wherein the "…data clearly represented physical and tangible objects, namely the structure of bones, organs, and other body tissues." As a result, Applicant's claims do not satisfy the transformation prong of the machine-or-transformation test.

With respect to claim 26, Applicant argues the cited art does not disclose auditing the facility and the program to determine if certain minimum program requirements for automated external defibrillators and their use within the facility have been met. The Examiner respectfully disagrees. This particular limitation simply requires that certain minimum program requirements for automated external defibrillators and their use within the facility have been met. As such, requiring completion or equivalent training program, including additional refresher classes required to renew certification, as discussed in Altmann, is indeed a minimum program requirement for automated external defibrillators and their use within the facility. In other words, and as articulated by Applicant in a later claim limitation, causing a review of personnel at the facility to determine the number and status of trained and certified personnel to use the at least one deployed defibrillator, as seen in Altmann, is indeed a determination if certain minimum program requirements for automated external defibrillators and their use within the facility have been met. Moreover, a requirement of renewing certification is indeed an aspect of auditing a company with an AED program, because a company with no certified personnel would necessarily render the AED program moot.

Applicant also argues the cited art does not disclose determining as one of the minimum program requirements the required locations for defibrillators as compared with the at least one location of the at least one deployed defibrillator so as to assure accessibility by providing predetermined proximity of the defibrillators to a victim regardless of the location of the victim within the facility. The Examiner respectfully disagrees. Becker et al disclose a plan for placement of defibrillators in higher-incidence locations (paragraph 2, page 5), wherein for example, a defibrillator could be located at each cluster of gates at an airport, at each entrance of a mall, or efficiently located on each floor of a jail.

Applicant also argues the cited art does not disclose causing a review of personnel at the facility to determine the number and status of trained and certified personnel to use the at least one deployed defibrillator. The Examiner respectfully disagrees. Altmann discloses how many people are being trained and their previous medical/CPR training, number 9, page 3.

Applicant also argues the cited art does not disclose an operational review of the at least one deployed defibrillator including the battery and electrodes of the at least one deployed defibrillator. The Examiner respectfully disagrees. PAED disclose medical control and quality assurance, including periodic assessment of the service and operators and identification of AED device used, page 3. In addition, Altmann discloses an AED including preconnected, nonpolarized electrodes (number 4, page 2), however neither Altmann, Becker et al, nor PAED explicitly disclose including the battery and electrodes of the at least one deployed defibrillator and including a

required time for replacement of the battery and the electrodes. Moreover, and as agreed to by Applicant on page 8 of the response, reviewing the battery and electrodes, including determining a time for replacement is old and well known. As such, the timing for replacement of the battery and electrodes is simply before or right after they are rendered dead and/or non-functional.

Applicant also argues the cited art does not disclose reporting results of the auditing to the facility so as to cause any necessary modifications in the program, and certifying that the minimum program requirements for defibrillators including the at least one deployed defibrillator and their usage at the facility have been satisfied. The Examiner respectfully disagrees. Altmann discloses Survivalink works with customers to develop and implement AED program, including providing curriculum (number 9, page 3), and the requirement of completion or equivalent training program. As discussed above, requirement of renewing certification is indeed an aspect of auditing a company with an AED program, because a company with no certified personnel would necessarily render the AED program moot.

Lastly, Applicant argues the superficial explanation of obviousness falls far short of the KSR analysis required in view of the Federal Circuit's recent decision. The Examiner respectfully disagrees. As discussed in the MPEP §2141, the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329,

1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" KSR, 550 U.S. at ___, 82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include: (A) Combining prior art elements according to known methods to yield predictable results, which the rationale applied here.

Conclusion

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (571)272-6726. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andre Boyce/
Primary Examiner, Art Unit 3623
September 21, 2010